IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7535 OF 2002

Mohammed Hanif Abdul Razak Shaikh .. Petitioner

Vs.

Municipal Corporation of the City of Bhiwandi Nizampur and ors. .. Respondents

Ms. Gouri Godse for petitioner.
Mr. R.M. Agrawal for respondent no.1 absent.
Mr. P.S. Dani for respondent nos.2 to 4.

CORAM: B.H. MARLAPALLE, J.

Date : June 06, 2006.

P.C.:

1. Heard Ms. Godse the learned counsel for the petitioner who filed R.C. Suit No.704 of 2001 before the learned Civil Judge, Junior Division at Bhiwandi challenging the notice dated 23/4/2001 issued by the Bhiwandi Nizampur Municipal Council, which is now a Corporation in respect of House No.193/2, Ialampura, Bhiwandi. The plaintiff claimed that he had made construction of brick wall having roof of cement sheet admeasuring 8 ft. x 5 ft. in the Municipal House No.193/2 and he further stated that the allegation of illegal construction made by him was not correct. As

per the plaintiff he was in occupation of the suit structure since the year 1978 and it was constructed by the landlords much prior of his occupation. The learned Judge of the trial court was strongly influenced by the prima facie evidence that the plaintiff was in possession of the suit structure, the possession was authorised and the defendant-council/corporation had issued different licences in favour of the plaintiff to run his business from the suit premises/shop. Consequently, an order of temporary injunction came to be passed by the learned Civil Judge, J.D., Bhiwandi against all the defendants restraining them from demolishing the portion of the suit shop by his order dated 27/7/2001.

2. The said order came to be challenged by defendant nos.2 to 4 landlords in Misc. Civil Appeal No.143 of 2001 and the learned 4th Additional District and Sessions Judge at Thane was pleased to allow the appeal by setting aside the order passed by the trial court. Consequently, the application at Exh.5 came to be dismissed and hence this petition under Article 227 of the Constitution.

3. The trial court did not record any prima facie finding that the notice issued by the Municipal Council/Corporation on 23/4/2001 under Section 189 (8) of the Maharashtra Municipalities Act was illegal or unenforceable in law. Unless there was a prima facie finding that the suit structure could not be called as illegal/unauthorised, there was no occasion for the trial court to stay the notice. The Lower Appellate Court rightly considered the contentions of the respective parties and noted the contentions of the landlords that the suit structure was illegal and unauthorised. The Local Authority i.e. Municipal Council would not be restrained from removal of the illegal and unauthorised construction unless there was a prima facie case made out that the notice structure was legal and authorised. It was the case of the defendants that the notice structure was raised by the plaintiff in the marginal space of Municipal House No. 193/2 and the plaintiff started the laundry shop in the name and style of "M/s. Shabana Washing Company" in the said structure. The Lower Appellate Court also noted that even if the plaintiff was in possession of part of Municipal House No.193/2, that possession

itself would not defeat the notice issued by the Municipal Council. This reasoning given by the Lower Appellate Court cannot be termed as perverse or grossly erroneous so as to call for interference in the impugned order.

4. Hence, the petition is rejected summarily.

(B.H. Marlapalle,J.)